

**Food Stamp Program  
Violations Hearings and Claims**

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Trans. by S.L. 917

**Food Stamp Program  
Violations Hearings and Claims****Chapter 367  
Page 367.025****Rev. 1/91**367.025: Introduction

The Department shall provide a fair hearing to any household that is dissatisfied with any Department action or inaction that affects participation in the Food Stamp Program.

367.050: Notification of Right to Request Hearing

At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or an authorized representative, such as a legal counsel, a relative, a friend or other spokesperson, and that the household may bring an interpreter. Each household shall also be informed that in cases in which the head of the household is not fluent in English, the Department will provide an interpreter if the household requests one at least one week before the hearing and that the hearing may be postponed for this purpose. In addition, at any time the household expresses to the Department that it disagrees with the Department action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service. A copy of the hearing procedures shall be made available to any interested party upon request.

367.075: Consolidated Hearings

The Department may respond to a series of individual requests for hearings by conducting a single group hearing. The Department may consolidate only cases where the sole issue is one of state and/or federal law, regulations or policy and individual issues of fact are not disputed. In all group hearings, the regulations governing individual hearings must be followed. Each individual household shall be permitted to present its own case or have the case presented by a representative.

367.100: Time Period for Requesting Hearing

A household shall be allowed to request a hearing on any action by the Department, or on loss of benefits which occurred in the prior 90 days. Action by the Department includes a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

367.125: Request for Hearing

A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household request what action it wishes to appeal, the Department may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

**Food Stamp Program  
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In response to a recipient, the Department shall:

- (A) Assist the household in filing an appeal. If a household makes an oral request for a hearing, an eligibility worker will provide the household with an appeal form and assistance in completing the form if such help is requested;
- (B) Advise the household of any available legal services which can provide representation at the hearing;
- (C) Upon request, make available without charge a copy of materials necessary for a household or its representative to determine whether to file an appeal or to prepare for the hearing (in accordance with 106 CMR 360.400 confidential information shall not be released to the household for review);
- (D) Provide an interpreter to explain the hearing procedures, including the right to an interpreter at the hearing and the procedures for requesting an interpreter, if the party requesting a hearing is not fluent in English and resides in an area where the Department is required to provide bilingual staff or interpreters in accordance with FNS regulations;
- (E) Provide an interpreter to interpret at the hearing for an appellant who is not fluent in English if the appellant requests an interpreter at least one week before the hearing is scheduled or rescheduled; and
- (F) Provide any interested party with a copy of the rules of procedures governing Fair Hearings.

367.175: Denial or Dismissal of Request for Hearing

The Division of Hearings shall deny or dismiss a request for a hearing when:

- (A) The request is not received within the time specified in 106 CMR 367.100;
- (B) The request is withdrawn in writing by the household or its representative; or
- (C) The household or its representative fails, without good cause, to appear at a scheduled hearing.

367.200: Household Request for Postponement

The household may request and is entitled to receive postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision, as specified in 106 CMR 367.450, may be extended for as many days as the hearing is postponed. For example, if a hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

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- (A) The Department shall offer agency conferences to households who wish to contest a denial of expedited service. The Department shall advise households that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process. The agency conference may be attended by the eligibility worker responsible for the Department action and shall be attended by an eligibility supervisor and/or the local office director or designee, and by the household and/or its representative. Failure of the household to attend the agency conference shall not be cause to reduce or terminate benefits. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must be held unless the household makes a written withdrawal of its request for a hearing.
- (B) An agency conference for households contesting a denial of expedited service shall be scheduled within two working days, unless the household requests that it be scheduled later.

367.250: Expedited Hearings

The Department shall expedite hearing requests from households such as migrant farmworkers who plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and a restoration of benefits, if the decision so indicates, before they leave the area.

367.275: Continuation of Benefits

If a household requests a fair hearing within the period provided by 106 CMR 343.250, and its certification period has not expired, the household's participation in the Program shall continue on the basis authorized immediately prior to the Notice of Adverse Action unless the household specifically waives continuation of benefits. The form for requesting a fair hearing shall contain space for the household to indicate whether or not continued benefits are requested. If the form does not positively indicate that the household has waived continuation of benefits, the Department shall assume that continuation of benefits is desired and the benefits shall be issued accordingly. If the Department action is upheld by the hearing decision, a claim against the household shall be established for all overissuances. If a hearing request is not made within the period provided by 106 CMR 343.250, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the time specified in 106 CMR 343.250 was for good cause, as determined by 106 CMR 343.320(D)(1) and (2), the eligibility worker shall reinstate the benefits to the prior level.

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When benefits are reduced or terminated due to a mass change, participation at the prior level shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that federal law or regulations are being misapplied or misinterpreted by the Department.

**367.300: Reduction or Termination of Benefits**

Once continued or reinstated, benefits shall not be reduced or terminated prior to receipt of the official hearing decision unless one of the following occurs:

(A) Issue of Federal Law or Regulation

The hearing official makes a preliminary determination, in writing at the hearing, that the sole issue is one of federal law or regulation and that the household claim that the Department improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(B) Change in Household Eligibility or Benefit Level

A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent Notice of Adverse Action;

(C) Mass Change

A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(D) Certification Period Expires

The household's certification period expires.

**367.325: Notification of Hearing**

The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the household. In order to permit adequate preparation of the case, advance written notice of the hearing shall be provided to all parties involved at least one week prior to the hearing. However, the household or its representative may request less advance notice to expedite the scheduling of the hearing. The notice shall include the following:

(A) Contact Person in the Division of Hearings

The name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing;

**Food Stamp Program  
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A statement to the household indicating that the Department will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause;

**(C) Fair Hearing Procedures**

An explanation of the Department hearing procedures and any other information which will provide the household with an understanding of the proceedings and contribute to the effective presentation of the household case;

**(D) The Right to Examine the Case File**

A statement that the household or representative may examine the case file prior to the hearing;

**(E) The Right to Request an Interpreter**

A statement, in English, Spanish, and other languages spoken by a significant minority population, emphasizing the importance of understanding what is said at the hearing and of being able to communicate at the hearing, and encouraging the appellant to bring an interpreter to the hearing or to request a Department-provided interpreter if he or she is not fluent in English; and

**(F) Procedure and Time Limit for Requesting an Interpreter**

An explanation of the procedure and time limit for requesting a Department-provided interpreter and of the right to at least one postponement in order to request or bring an interpreter.

**367.350: Attendance at Hearing**

The hearing shall be attended by a representative of the Department and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household if the household so chooses. The hearing official shall have the authority to limit the number of persons in attendance at the hearing if space is limited.

**367.375: Hearing Official**

(A) The person designated by the Department to preside over the hearing shall be the hearing official. The hearing official shall be an impartial party who does not have any personal stake or involvement in the case and who was not directly involved in the initial determination of the action which is being contested.

(B) The hearing official shall have the following powers and duties:

**(1) Administer Oath**

The hearing official shall administer oaths;

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The hearing official shall ensure that all relevant issues are considered;

(3) Record Evidence

The hearing official shall request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(4) Regulate the Conduct of the Hearing

The hearing official shall regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Inform Appellants of Right to Interpreter

The hearing official shall inform appellants who are not fluent in English of the right to a full and accurate interpretation by their own interpreter, or by a Department-provided interpreter. The hearing official shall conduct the bilingual hearing in accordance with the guidelines for conducting hearings through interpretation in the Manual for Transitional Assistance Referees. The purpose of the guidelines is to enable non-English speaking appellants to understand and to participate in the entire hearing as fully as if the appellant were fluent in English. To achieve this end, all statements, including questions, answers, and comments, of the appellant, hearing official, witnesses, and any other persons participating in the hearing, shall be fully translated into both languages without alteration of such statements, such as by changing from the first person to the third person;

(6) Order Medical or Professional Evaluations

The hearing official shall order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department. The medical evaluation will be at the expense of the Department. In any case in which the appellant hires a signature expert and is liable for a fee, the Department will pay a reasonable fee if the appellant prevails either at the administrative hearing or in a court appeal from the administrative hearing; and

(7) Render a Hearing Decision

The hearing official shall provide a record and render a hearing decision in the name of the Department.



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**Rev. 1/91****367.400: Household Rights During Hearing**

The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

- (A) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the Department to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the Department shall provide a free copy of portions of the case file that are relevant to the hearing. Confidential information protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision;

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- (B) Present the case or have it presented by a legal counsel or other person;
- (C) Bring witnesses;
- (D) Advance arguments without undue interference;
- (E) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;
- (F) Submit evidence to establish all pertinent facts and circumstances in the case; and
- (G) Have the hearing conducted through an interpreter in accordance with 106 CMR 367.375.

**367.425: The Appeal Decision**

- (A) Decisions of the hearing official shall comply with Department policy and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall be retained in accordance with Department policy and shall constitute the exclusive record for the final decision of the hearing official. The record will be available for copying and inspection by the household or its representative during normal office hours.
- (B) A decision by the hearing official shall be binding on the Department and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Department policy. The decision shall become a part of the hearing record.
- (C) The household (and the local office) shall be sent a copy of the decision, be advised of the right to judicial review where the Department action is upheld, and be advised that the household's benefits will be issued or terminated as decided by the hearing official.

**367.450: Time Period for Rendering and Implementing Decision**

Within 60 days of receipt of a request for a fair hearing, the Department shall conduct the hearing, arrive at a decision, and notify the household and the local office of the decision.

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When the hearing official determines that a household has been improperly denied Program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided in accordance with Section 366.500. Decisions which result in an increase in household benefits shall be reflected in the monthly allotment within ten (10) days of the receipt of the decision. The Department may take longer than the ten (10) days if it elects to make the decision effective in the normal issuance cycle, provided that the issuance will occur within sixty (60) days from the household request for the hearing. The Department shall restore benefits to households who are leaving the State before the departure if possible. If benefits are not restored before departure the office from which the household has moved shall prepare an authorization for the benefits and forward this with a copy of the hearing decision to the new office or to the household.

**(B) Decision Against the Household**

Decisions which result in a decrease in the household benefits shall be reflected in the next scheduled issuance following receipt of the fair hearing decision. When the hearing official upholds the Department action, a claim against the household for any overissuance shall be prepared in accordance with Department policy.

**367.475: Judicial Review**

When the hearing official upholds the Department action, the household shall be notified of the right to pursue judicial review of the decision.

**367.485: Compilation of Fair Hearing Decisions**

All Department hearing records and decisions shall be available for public inspection and copying, subject to disclosure safeguards provided in Section 360.400 and provided identifying names and addresses of household members and other members of the public are kept confidential.

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The Department shall establish a claim for overissuance against any assistance unit that has received more food stamp benefits than it was entitled to receive or any assistance unit that contains an adult member who was an adult member of another assistance unit that received more food stamp benefits than it was entitled to receive. All adult assistance unit members shall be jointly and severally liable for the value of an overissuance of benefits to the assistance unit.

A claim may be established for an unintentional program violation, in accordance with 106 CMR 367.495, or for an intentional program violation, in accordance with 106 CMR 367.500.

367.495: Unintentional Program Violations

A claim for overissuance is an unintentional program violation claim if the amount of the overissuance combined overissuances exceeds \$35 and was not caused intentionally, as defined 106 CMR 367.525. All claims established under the 1977 Food Stamp Act and future claims shall be collected in accordance with this section.

A claim of an unintentional program violation may be established due to either an inadvertent household error, as in (A), below, or due to an agency error as in (B), below, that occurred no more than six years prior to the month in which the overissuance was discovered.

(A) Inadvertent Household Error

A claim shall be considered to be an inadvertent household error claim if the overissuance was caused by a misunderstanding or unintended error on the part of the assistance unit. Inadvertent household error includes, but is not limited to, instances in which the assistance unit:

- (1) Unintentionally failed to provide correct or complete information;
- (2) Unintentionally failed to report a change in circumstances;
- (3) Received benefits to which it was not entitled; or
- (4) Received more benefits than it was entitled to receive, pending a Fair Hearing decision.

(B) Agency Error

A claim shall be considered to be an agency error claim if the overissuance was caused by a Department action or failure to act. Department error which shall result in a claim includes, but is not limited to, instances where the Department:

- (1) Failed to take prompt action on a reported change;

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- (2) Incorrectly computed the benefit level;
- (3) Incorrectly issued duplicate food stamp benefits which the assistance unit did not request but subsequently transacted;
- (4) Continued to provide benefits after the assistance unit's certification period had expired without redetermining eligibility or benefit level; or
- (5) Failed to reduce the benefit level when the public assistance grant changed.

(C) Non-Claim Situations

A claim for overissuance shall not be established when an overissuance has occurred as a result of the Department's failure to ensure that the assistance unit signed the application form or completed a work registration form.

(D) Calculating the Amount of an Unintentional Program Violation Claim

The amount of an overissuance claim due to an unintentional program violation is determined by calculating the difference between the amount of benefits actually received and the amount the assistance unit was entitled to receive during the time period at issue.

If the assistance unit received excess benefits because it unintentionally failed to report a change in circumstances, the first month of overissuance shall be the month the change would have been effective had it been reported on time.

If the Department did not act timely on a reported change, the first month of overissuance shall be the first month the change would have been effected if it were reported on time. In no event shall the Department determine the month the change would have been made effective to be more than two months from the month in which the change occurred. If a notice of adverse action was required, but not provided, for the purpose of calculating the claim, the Department shall assume the maximum advance notice period would have expired without the assistance unit's requesting a fair hearing.

(E) Collecting Claims for Unintentional Program Violation

(1) Inadvertent Assistance Unit Error

The Department shall initiate the collection of a claim due to an inadvertent assistance unit error by sending the assistance unit a claim demand letter and a repayment agreement, unless the assistance unit has repaid the claim or the Department has documentation which shows that no member of the assistance unit can be located.

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The claim demand letter (request for repayment) shall contain the information at 106 CMR 364.870(A) through (E).

The repayment agreement shall contain the information at 106 CMR 367.825(C)(1), (2), (3), (4), (6), (7) and (9). The agreement shall also state that failure to return a completed and signed copy of the agreement within 20 days shall result in automatic benefit reduction. Renegotiation of the repayment agreement may be requested by the household member or the Department whenever there is a substantial change in circumstances. At no time shall an agreement be made which would recover less per month than could be collected through automatic benefit reduction.

Lost benefits shall be offset against a claim for overissuance.

(2) Agency Error

The Department shall initiate the collection of a claim due to Agency error by sending a claim demand letter (request for repayment) and a repayment agreement, unless the household has repaid the claim or the Department has documentation which shows that no member of the household can be located.

The claim demand letter shall contain the information at 106 CMR 364.870(A) through (E).

The repayment agreement shall contain the information at 106 CMR 367.825(C)(1), (2), (4), (6), and (7).

If the household fails to respond to the demand letter, additional demand letters may be sent. The Department may also pursue other collection actions against a household that fails to respond to a demand letter.

(F) Compromising Claims

If the full amount of the claim cannot be liquidated in 3 years without creating a financial hardship for the household, the Department may compromise the claim by reducing it to an amount that will allow the household to pay the claim within 3 years. The Department shall not compromise below the amount which could be collected through automatic benefit reduction (\$10 or 10 percent, whichever is greater).

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If a household has signed a repayment agreement, agreeing to repay an overissuance due to inadvertent household error, and then fails to meet the payment schedule, the Department shall notify the household that unless payment is made or the agreement is renegotiated due to a change in circumstances, the next scheduled allotment shall be reduced by the greater of ten percent (10%) of the allotment or ten dollars (\$10).

If a household requests renegotiation of its repayment agreement but the Department does not find that the household's circumstances have changed enough to warrant renegotiation, allotment reduction shall be initiated or continued, without further notice unless payment is made.

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An unintentional program violation claim may be suspended if no collection action has been taken because the claim is collected through offset, or the claim does not exceed \$35. If the claim is for an inadvertent household error, the household is no longer participating and at least one claim demand letter has been sent, further collection may be suspended, at the Department's discretion, when:

- (1) The household cannot now be located; or
- (2) The cost of further collection action is likely to exceed the amount that can be recovered.

**(I) Terminating Collection**

A claim shall be determined uncollectible after three years in a suspended status.

**(J) Postponing Collection**

Collection shall be postponed when the household is being referred for possible prosecution at an Administrative Disqualification Hearing, or a court of appropriate jurisdiction, on the same or related issues(s). Postponement shall also occur if a legal representative prosecuting the household advises in writing that collection action will prejudice the case.

**(K) Changes in Household Composition**

If the household composition has changed since the overissuance occurred, collection action shall be initiated against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, the Department may pursue collection action against any household that has a member who was an adult member of the household that received the overissuance. The Department may also offset the amount of the claim against restored benefits owed to any household that contains a member who was an adult member of the original household at the time the overissuance occurred. The Department may not, under any circumstances, collect more than the amount of the claim. In pursuing claims, the Department may use any of the appropriate methods of collecting payments.



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A claim for overissuance shall be pursued as an intentional program violation claim if an Administrative Disqualification Hearing, or a court of appropriate jurisdiction, has found that a household member committed an intentional program violation, or if the individual has filed a signed waiver of his or her right to an Administrative Disqualification Hearing or entered into a consent agreement with the court. All claims established under the 1977 Food Stamp Act and future claims shall be collected in accordance with this section.

(A) Calculating the Amount of an Intentional Program Violation Claim

The amount of an overissuance claim due to an intentional program violation is determined by calculating the difference between the amount actually received and the amount the household should have received during the time period at issue. When determining the amount of benefits the household should have received, the Department shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report. The Department shall not include any amount of an overissuance that occurred in a month more than six years from the date the overissuance was discovered.

If the household member is determined to have committed an intentional program violation by knowingly, willfully, and with deceitful intent failing to report a change in its household circumstances, the first month benefits were overissued shall be the first month the change would have been made effective had it been reported on time.

(B) Collection of Intentional Program Violation Claim

- (1) If the household member is found to have committed an intentional program violation at either an Administrative Disqualification Hearing or by a court of appropriate jurisdiction, or if the individual has entered into a consent agreement with the court or filed a signed waiver in accordance with 106 CMR 367.660, the Department shall send an IPV claim demand letter (Request for Repayment) and a repayment agreement letter (in accordance with 106 CMR 367.825) unless:
  - a. The household has repaid the claim;
  - b. The Department has documentation which shows that no member of the household can be located; or
  - c. The legal representative prosecuting a member of the household for intentional program violation advises in writing that collection action will prejudice the case.

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- (2) If the intentional program violation claim has not been repaid and a completed and acceptable signed repayment agreement letter has not been received by the Department within 10 days of the date it was mailed, collection action shall be initiated by automatically reducing the household's allotment each month. Any time benefits are automatically reduced due to an IPV, the allotment shall be reduced by 20 percent of the household's entitlement before sanctions or \$20, whichever is greater. Automatic benefit reduction shall continue until such time as the claim is repaid. The acceptance of a completed and signed repayment agreement or renegotiation in accordance with 106 CMR 367.500(B)(6) may change the method of repayment. The repayment agreement shall also state that failure at any time to honor the terms of a returned agreement shall result in benefit reduction to last until the terms are honored or the claim is repaid. In addition to the demand letter, personal contact shall be made when appropriate.
- (3) If the household agrees to pay the claim, collection shall be in accordance with this chapter.
- (4) The Department may lower a household's allotment below the minimum level in order to collect an intentional program violation claim.
- (5) If the household can be located but is not participating, the Department shall attempt to collect the claim, and shall defer benefit reduction until the household resumes participation in the Program.
- (6) Renegotiation of the repayment agreement may be requested by the household or the Department any time there is a substantial change in circumstances. At no time shall an agreement be made to collect less per month than could be collected through automatic benefit reduction.

(C) Suspending Collection of a Claim Due to an Intentional Program Violation

Collection action shall be suspended at any time the household is no longer participating and there is documentation that:

- (1) the cost of further collection action is likely to exceed the amount that can be recovered and the Department has sent at least one demand letter for claims under \$100, at least two demand letters for claims between \$100 and \$400 and at least three demand letters for claims of more than \$400; or

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- (2) Neither the household which contains the individual who committed the IPV, nor the household nor any individual responsible for the overissuance can be located.

(D) Terminating Collections

A claim shall be determined uncollectible after three years in a suspended status.

(E) Changes in Household Composition

If the household composition has changed since the overissuance occurred, collection action shall be initiated against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, the Department may pursue collection action against any household that has a member who was an adult member of the household that received the overissuance. The Department may also offset the amount of the claim against restored benefits owed to any household that contains a member who was an adult member of the original household at the time the overissuance occurred. The Department may not, under any circumstances, collect more than the amount of the claim. In pursuing claims, the Department may use any of the appropriate methods of collecting payments.

367.510: Methods of Collecting Overissuance Claims

Payments on unintentional or intentional program violation claims shall be collected in one of the following ways:

- (A) by benefit reduction;
- (B) by withholding amounts from unemployment compensation;
- (C) federal payment offset;
- (D) by federal salary offset; or
- (E) by any other reasonable means.

In no instance shall the amount of regular installment payments or wage assignment payments be less than the amount that could be collected by automatic benefit reduction (10 percent or \$10, whichever is greater, for an unintentional program violation; 20 percent or \$20, whichever is greater, for an intentional program violation). The amount of the claim shall be offset by any lost benefits which are owed to a household until the time the claim is terminated. Civil court action may be initiated to obtain payment of the claim.

If the full amount of the claim cannot be liquidated in three years without creating a financial hardship for the household, the Department may compromise the claim by reducing it to an amount that will allow the household to pay the claim within 3 years. The Department shall not compromise below the amount which could be collected by automatic benefit reduction (10 percent or \$10, whichever is greater, for an unintentional program violation; 20 percent or \$20, whichever is greater, for an intentional program violation).

Benefit reduction shall be instituted if repayment terms are not agreed upon. Repayment shall be initiated no later than 30 days from the date the repayment agreement is mailed.

Wage assignment shall be instituted to collect a delinquent overpayment by offsetting a former recipient's wages.

The Treasury Offset Program (TOP) allows the Department to collect a delinquent overpayment by intercepting payments due to a former recipient from any agency in the federal government.

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The Department shall act on behalf of and as FNS in any bankruptcy proceedings against bankrupt assistance units owing food stamp claims. The Department shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distributions of assets, to the same extent as FNS. Acting as FNS, the Department shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed.

**367.520: Introduction to Administrative Disqualification Hearings (ADH)**

An ADH shall be conducted in order to determine if an intentional program violation has been committed. An ADH shall be initiated by the Department if substantial evidence exists to indicate an IPV was committed.

**367.525: Definition of an Intentional Program Violation (IPV)**

For purposes of determining at an ADH whether or not an IPV was committed, an IPV is any action taken by an individual for the purpose of establishing or maintaining food stamp eligibility or for increasing or preventing a reduction in the allotment amount which is committed knowingly, willfully, and/or with deceitful intent:

- (A) making a false statement(s) to the Department, either orally or in writing, to obtain or maintain food stamp benefits to which the assistance unit is not entitled;
- (B) concealing information to obtain or maintain food stamp benefits to which the assistance unit is not entitled;
- (C) making a false or misleading statement(s) or misrepresentation(s) to conceal or withhold facts to obtain or maintain food stamp benefits to which the assistance unit is not entitled;
- (D) altering or transacting food stamp benefits to obtain benefits to which the assistance unit is not entitled;
- (E) using food stamp benefits to buy nonfood items such as alcohol or tobacco;
- (F) using or possessing improperly obtained coupons or food stamp benefits;
- (G) trading/trafficking (buying or selling) food stamp benefits; or
- (H) intentionally committing any act(s) which violates the state food stamp regulations.

**367.550: Warning to Applicants**

The Department shall inform the assistance unit in writing of the disqualification penalties for committing an IPV each time it applies for program benefits. The penalties shall be written in clear, prominent and boldface lettering on the application form or as a separate notification. The Department shall provide the written penalty warning in English, Spanish, and other languages spoken by a significant minority population.

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The provisions of 106 CMR 367.350, 367.375, 367.400, 367.425(A) and 367.520 through and including 367.825 are applicable to ADHs. The hearing official shall advise the household member or his or her representative that he or she may refuse to answer questions during the ADH.

367.625: Timeliness Standards

The Department shall provide written notice to the household member suspected of an IPV at least 30 days in advance of the hearing. Within 90 days of the date the household member is notified in writing that an ADH initiated by the Department has been scheduled, the Division of Hearings shall conduct the hearing and the hearing official must render a written decision. The Department must initiate administrative action which will make the decision effective beginning the first possible month following the date the household receives written notification of the hearing decision. The household member or representative is entitled to one postponement of up to 30 days provided the request for postponement is made at least 10 days in advance of the hearing. If the hearing is postponed, the 90-day time limit shall be extended for as many days as the hearing is postponed.

367.650: Consolidation of ADH with Fair Hearing

In order to determine the amount of the claim, the Department may combine a fair hearing and an ADH if the factual issues arise out of the same or related circumstances. The household member shall receive prior notice that the hearings will be consolidated and that the claim amount shall be determined as a result. The member shall also be informed that due to the consolidation, he or she shall not have the right to a subsequent fair hearing to dispute the claim amount. The timeliness standards of 106 CMR 367.625 shall be in effect.

367.660: Waiver of an ADH

A waiver form allowing the individual to forego the ADH shall be issued with the advance notice of an ADH. An individual suspected of an IPV, and the household of which he or she is a member, may complete, sign and return the waiver form to the Department. By completing, signing and returning the waiver form, the individual and the household agree to all penalties and requirements, including repayment, incumbent upon a household containing a member who is found guilty of an IPV at an ADH.

The waiver form shall include:

- (A) a statement that signing the form will result in automatic disqualification and recoupment;
- (B) the opportunity for the individual accused of an IPV to admit or not to admit the charges cited in the ADH advance notice;
- (C) a statement that neither the household nor the individual has the right to a subsequent fair hearing on the same issue(s), nor on the amount of the claim;

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- (D) a statement that the remaining assistance unit members will be held responsible for the claim even if the assistance unit composition changes or the household stops participating in the program;
- (E) the name and telephone number of someone who can be of assistance if the accused should wish to discuss the charges, or the implications of the waiver;
- (F) a place for the individual and the head of the assistance unit or authorized representative if different, to sign the form;
- (G) a statement that failure to sign and return this form within the time period specified by the Department will result in the holding of an ADH;
- (H) the charge(s) against the assistance unit member;
- (I) a summary of evidence and how and where it can be examined;
- (J) a listing of the assistance unit member's rights as contained in 106 CMR 367.400;
- (K) a copy of the Department's ADH hearing procedures; and
- (L) a statement that failure to return this waiver shall in no way have a negative impact on the result of the ADH.

367.675: Advance Notice of an ADH

The Department shall provide advance notice of an ADH in accordance with 106 CMR 367.625. However, no notice shall be sent and no ADH shall be held unless it is determined that the applicant or recipient received the penalty warning described in 106 CMR 367.550 in the appropriate language prior to the date of the suspected IPV. This notice shall be sent by First Class Mail and shall contain:

- (A) the date, time, and place of the hearing;
- (B) the charge(s) against the assistance unit member;
- (C) a summary of the evidence, and how and where it can be examined;
- (D) a warning that the decision will be based solely on information provided by the Department if the assistance unit member fails to appear at the hearing;
- (E) a warning that a finding that an IPV was committed will result in

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a 12-month period of disqualification for the first finding; a 24-month period of disqualification for the second finding; and permanent disqualification for the third finding. This warning shall inform the individual of the period of disqualification he or she may be subject to if the hearing official finds that the household committed an Intentional Program Violation.

- (F) A listing of the assistance unit member's rights as contained in 106 CMR 367.400;
- (G) A copy of the Department's hearing procedures;
- (H) A statement that the assistance unit member may call the local office to obtain the name and telephone number of someone who can provide free legal advice; and
- (I) A statement that the assistance unit member or authorized representative has 10 days from the date of the scheduled hearing to present good cause for failure to appear, in order to receive a new hearing.

367.700: Scheduling of the Hearing

The time and place of the ADH shall be accessible to the member(s) suspected of an IPV. If the assistance unit member(s) or his or her representative fails to appear at the hearing without good cause, the hearing shall be conducted. Even though the assistance unit member(s) or authorized representative is not present, the hearing official is required to carefully consider the evidence and determine if an IPV was committed based on clear and convincing evidence. If the assistance unit member(s) is found to have committed an IPV but the Director of the Division of Hearings for the Department later determines that the assistance unit member(s) or representative failed to appear, with good cause (in accordance with 106 CMR 343.320(D)), the previous decision shall no longer remain valid and the Department shall conduct a new hearing. The assistance unit member(s) has 10 days from the date of the scheduled hearing to present reasons indicating good cause for failure to appear.

367.725: Participation While Awaiting an ADH

The Department shall determine eligibility and benefit level for an assistance unit awaiting an ADH decision by considering all factors except those concerning the IPV or related recoupment. Changed circumstances, the expiration of the certification period, and all other Program rules shall be treated in the usual manner.

367.750: Standard of Proof for Determining an IPV

The hearing official shall base the determination of an IPV on clear and convincing evidence which demonstrates that the assistance unit member willfully, knowingly, and with deceitful intent committed an IPV.



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- (1) Individuals found to have committed a Food Stamp Program IPV at an ADH shall be ineligible for food stamp benefits for a period of one year for the first finding, two years for the second finding and permanently for the third finding. Any disqualification(s) resulting from an ADH held before the effective date of these regulations shall be counted as one finding with the exception of permanent disqualifications which shall remain in effect.
- (2) Individuals found to have committed a cash program IPV at an ADH, in the absence of a Food Stamp Program IPV under (A)(1) above, shall be ineligible for food stamp benefits for the period required under the cash program rules.

**(B) Disqualification for Receipt of Multiple Food Stamp Benefits**

Individuals found by the Department or convicted by a federal, state or local court of having made a fraudulent statement or representation with respect to identity or place of residence to receive multiple benefits simultaneously under the Food Stamp Program shall be ineligible for food stamp benefits for ten years.

**(C) Disqualification for Trading Food Stamp Benefits**

- (1) Individuals found guilty by a federal, state or local court of trading (buying or selling) food stamp benefits for a controlled substance shall be ineligible for food stamp benefits for a period of two years for the first finding, and permanently for the second finding.
- (2) Individuals found guilty by a federal, state or local court of trading (buying or selling) food stamp benefits for firearms, ammunition or explosives shall be ineligible for food stamp benefits permanently.
- (3) Individuals found guilty by a federal, state or local court of trading (buying or selling) food stamp benefits having a value of \$500 or more shall be ineligible for food stamp benefits permanently.

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(D) Disqualification of Fleeing Felons

Individuals who are fleeing to avoid prosecution, custody or confinement after conviction of a felony under the laws of the place from which the individual is fleeing or is violating a condition of probation or parole shall be ineligible for food stamp benefits.

(E) Disqualification for Failure to Comply with a Work Requirement(1) Disqualification for Failure to Comply with Food Stamp Employment & Training Program in Accordance with 106 CMR 362.310.

Individuals found to have failed to comply without good cause with Food Stamp Employment & Training Program (FS/ET) requirements shall be ineligible for food stamp benefits for a period of three months for the first finding, six months for the second finding and twelve months for the third finding.

If the individual found to have failed to comply without good cause with FS/ET for a third time is the head of household, the entire assistance unit shall be ineligible for food stamp benefits for a period of six months.

(2) Disqualification for Voluntary Quit in Accordance with 106 CMR 362.340.

If an individual is found to have voluntarily quit a job without good cause at application, the entire assistance unit shall be ineligible for food stamp benefits for a period of three months for the first finding, six months for the second finding and twelve months for the third finding.

If an individual is found to have voluntarily quit a job without good cause while participating in the program, the individual shall be ineligible for food stamp benefits for a period of three months for the first finding, six months for the second finding and twelve months for the third finding.

If the individual found to have voluntarily quit a job without good cause while participating in the program for a third time is the head of household, the entire assistance unit shall be ineligible for food stamp benefits for a period of six months.

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- (F) With the exception of the Disqualification for Failure to Comply with a Work Requirement, the Department shall disqualify the individual only, not the entire assistance unit. Once disqualification begins it shall continue uninterrupted, regardless of current eligibility. Repayment shall also continue regardless of current eligibility.

Assistance units cannot be considered categorically eligible if they contain one or more disqualified members. See 106 CMR 365.180 for additional information.

In the case of IPV's, the period of disqualification shall begin with the first possible month following the date written notification of the ADH decision is received by the assistance unit. If the individual waives his or her rights to an ADH in accordance with 106 CMR 367.660 or signs a consent agreement with the court, the length of the disqualification period shall be determined by counting each waiver or agreement as one finding that an IPV was committed. In the case of a court conviction, the period of disqualification shall begin with the first possible month following the date of notification to the Department of the court conviction.

An assistance unit's benefit level shall not be increased as a result of an IPV disqualification.

The length of the disqualification for any IPV claim or court conviction established before the effective date of these regulations shall be treated in accordance with the standards in effect at the time the IPV claim or court conviction was established, unless otherwise stated.

367.825: Results of an ADH - Notification

- (A) If the hearing official determines the household member(s) did not commit an IPV, the Department shall inform that member(s) in writing of such finding. The notice shall contain the date the ADH was held, the case number and the findings of the hearing official.
- (B) If the hearing official determines the household member(s) committed an IPV, the Department shall inform the member(s) in writing of such findings, and that he or she will be disqualified from the Program for the appropriate time period (106 CMR 367.800), regardless of the dollar amount of the IPV. The notification shall contain the following information:
  - (1) The case name and number, the amount of the claim, date of decision, the number of months of disqualification, and notification that if the member is no longer participating the disqualification will be deferred until he or she reapplies and is determined to be eligible.
  - (2) A separate notice to the remaining household member(s), if any, of the adjusted allotment level or that the household must reapply because the certification period has expired and the household's right to a fair hearing regarding the new allotment level unless the hearing has already been consolidated with an ADH or a waiver or consent agreement has been filed.
- (C) A repayment agreement shall also be sent. This agreement shall contain:
  - (1) The amount owed the Department;
  - (2) The types and terms of each restitution option;
  - (3) The date repayment must commence;
  - (4) A statement that the Department or the household may request renegotiation of the repayment option any time there is a change in circumstances;
  - (5) A statement that the failure to return a completed and signed copy of an agreement acceptable to the Department within 30 days shall result in automatic benefit reduction at a rate of the greater of 20 percent of the household's entitlement or \$10. The agreement shall also include a statement that benefit reduction shall last until the agreement is filed or the claim is repaid and that benefit reduction will be reimposed at any time if any terms of the agreement are not honored;

Trans. by S.L. 1105

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- (6) An accounting of any amount offset;
- (7) A statement that recoupment shall begin as soon as possible after the agreement is filed;
- (8) The date the disqualification period will commence; and
- (9) A statement that no agreement shall be made which will allow a smaller payment than could be collected through automatic benefit reduction.

367.840: Out-of-State Disqualification Referrals

The disqualification of an individual from the Food Stamp Program in another state shall be applicable in Massachusetts as if it originated in Massachusetts. Penalties arising from the disqualification of an individual for an IPV in another state shall be in accordance with 106 CMR 367.800.

367.850: Introduction to Civil and Criminal Prosecution

A case of an alleged intentional program violation(s) may be taken to a court of appropriate jurisdiction for civil or criminal prosecution. The case will be prosecuted with either the United States of America, the Commonwealth of Massachusetts or a political subdivision as prosecutor or plaintiff.

Trans. by S.L. 661

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367.900: Duties and Limitations on the Department with Respect to Court Ordered Disqualification

The Department shall disqualify an individual(s) found guilty of an intentional program violation by the court, in accordance with Section 367.800, unless otherwise ordered by the court. The Department shall initiate the disqualification period with the first possible month following the date the disqualification was ordered.

367.925: Notification of Court Imposed Disqualification

If the court finds the member guilty of an IPV, a written notice shall be sent prior to the period of disqualification, whenever possible. This notice shall inform the member of the decision and shall be in accordance with Section 367.825(B) and (C). Disqualification shall be initiated within forty-five (45) days of the court order, unless such time frame is contrary to the court order.

367.950: Overturned IPV Disqualification

In cases where a determination of an IPV is overturned or reversed by a court of appropriate jurisdiction, the Department shall reinstate the individual in the Program if the household is eligible. The Department shall restore any benefits that were lost as a result of the disqualification.